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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Implementation of the )  
Telecommunications Act of 1996: )  
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Telecommunications Carriers' Use )  
of Customer Proprietary Network )  
Information and Other Customer )  
Information )

CC Docket No. 96-115

**COMMENTS OF THE PERSONAL  
COMMUNICATIONS INDUSTRY ASSOCIATION**

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## SUMMARY

In implementing new Section 222 of the Communications Act of 1934, the Personal Communications Industry Association believes that there is no justification for further subdividing commercial mobile radio services ("CMRS") or for too-narrowly defining those services deemed necessary to or used in support of CMRS, for purposes of applying the customer proprietary network information ("CPNI") use restrictions set out in Section 222(e)(1). In addition, because CMRS is not local exchange service, CMRS providers are not subject to the subscriber list disclosure requirements of Section 222(e).

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The Personal Communications Industry Association ("PCIA")<sup>1</sup> hereby submits its initial comments in response to the above-captioned Notice of Proposed Rulemaking.<sup>2</sup> Section 702 of the Telecommunications Act of 1996 ("1996 Act")<sup>3</sup> added a new Section 222 to the Communications Act of 1934, which limits the use of customer proprietary network information ("CPNI") by telecommunications carriers. In implementing this section, the Commission should neither further subdivide commercial mobile radio service ("CMRS") for

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<sup>1</sup> PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

<sup>2</sup> FCC 96-221 (May 17, 1996) ("*Notice*").

<sup>3</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. §§ 151 *et. seq.*

purposes of the CPNI restrictions of Section 222(c)(1) nor classify CMRS carriers as providers of "telephone exchange service" for purposes of the subscriber list disclosure requirements of Section 222(e).

## I. INTRODUCTION

In its *Notice* implementing new Section 222, the Commission seeks comment on a series of proposed rules that are intended to "balance[] consumer privacy and competitive considerations to ensure that telecommunications carriers comply with their new statutory obligations to maintain the privacy of CPNI and other customer information."<sup>4</sup> In particular, the Commission asks for comment on whether CMRS should be subdivided into its component services for purposes of the cross-service marketing and CPNI use restrictions of Section 222(c)(1),<sup>5</sup> and on which services should be included within the definition of "telephone exchange service" for purposes of the subscriber list disclosure requirements of Section 222(e).<sup>6</sup>

As the trade association of wireless telecommunications providers and manufacturers, PCIA is vitally concerned that the CMRS market remain largely deregulated and highly competitive in order that its members can continue to provide consumers with a wide variety of competitively priced, high quality services. PCIA therefore provides its comments on portions of the Commission's proposed rules affecting CMRS providers. As described in

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<sup>4</sup> *Notice*, ¶ 2.

<sup>5</sup> *Id.*, ¶ 22.

<sup>6</sup> *Id.*, ¶ 43.

more detail below, PCIA's suggestions should enhance CMRS competition and protect customer privacy with a minimal amount of regulatory interference with market mechanisms.

## **II. CMRS SHOULD NOT BE FURTHER SUBDIVIDED FOR PURPOSES OF THE CPNI USE RESTRICTIONS OF SECTION 222(C)(1)**

Absent customer approval, Section 222(c)(1) prohibits carriers from using individually identifiable CPNI obtained from one telecommunications service to market services other than "the telecommunications service from which such information is derived" or "services necessary to, or used in, the provision of such telecommunications service."<sup>7</sup> For the purposes of these customer privacy protections, the Commission tentatively concluded that "it would be reasonable to interpret Section 222 as distinguishing among telecommunications services based on traditional service distinctions," including local, interexchange, and commercial mobile radio services.<sup>8</sup> The Commission also stated that it would "consider in a separate proceeding whether services in the CMRS category should be further subdivided for purposes of implementing Section 222."<sup>9</sup>

PCIA will comment in more detail on the issue of further subdividing CMRS in the proceeding commenced specifically for that purpose. PCIA does not believe, however, that any such proceeding is necessary. Rather, the vigorously competitive nature of the CMRS market compels the Commission *not* to further subdivide CMRS into its component services.

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<sup>7</sup> 47 U.S.C. § 222(c)(1).

<sup>8</sup> *Notice*, ¶ 22.

<sup>9</sup> *Id.*, ¶ 22 n.58.

Similarly, the Commission should not unduly limit the scope of the services considered necessary to or otherwise used in the provision of CMRS.

One of the purposes of Section 222 is to promote full and fair competition by prohibiting carriers from using CPNI gathered in the provision of one service for cross-marketing other services.<sup>10</sup> The CMRS industry, however, is already highly competitive. The factors that at least in part motivated the adoption of CPNI use limitations -- such as control of essential bottleneck facilities -- are not present in the CMRS marketplace. Therefore, prohibiting the use of CPNI to cross-market new wireless services or narrowly defining the scope of non-telecommunications services considered necessary to or used in support of CMRS offerings will undercut competition and impose unnecessary regulation, both contrary to the intent of the 1996 Act.<sup>11</sup>

### **III. CMRS CARRIERS DO NOT PROVIDE TELEPHONE EXCHANGE SERVICE AND SHOULD THEREFORE BE EXEMPT FROM THE SUBSCRIBER LIST DISCLOSURE REQUIREMENTS OF SECTION 222(E)**

Under Section 222(e), a telecommunications carrier that provides "telephone exchange service" shall provide subscriber list information "gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in

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<sup>10</sup> *Id.*, ¶ 15 ("we believe that Congress sought to address both privacy and competitive concerns by enacting Section 222").

<sup>11</sup> *See* H.R. Rep. No. 458, 104th Cong., 2d Sess. at 1 (1996) (the purpose of the 1996 Act is to create a "pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies").

any format." The Commission "interprets Section 222(e) to require not only LECs, but also any telecommunications carrier . . . to meet the requirements of this section to the extent such carrier provides telephone exchange service."<sup>12</sup>

PCIA agrees that the Commission's interpretation comports with the plain language of Section 222(e), and is therefore correct.<sup>13</sup> CMRS carriers do not provide "telephone exchange service," and they thus should not be required to make their subscriber list information available upon request. PCIA has demonstrated in its comments and reply comments in CC Docket No. 96-98 that CMRS providers are not LECs and do not provide local exchange service.<sup>14</sup>

The 1996 Act by its terms excludes CMRS providers from the statutory definition of "local exchange carrier."<sup>15</sup> Moreover, as demonstrated in the CC Docket No. 96-98 proceedings, there is no reason at this time (just a few short months after adoption of the statutory exemption) for the Commission to find that CMRS should be encompassed within the local exchange service concept.

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<sup>12</sup> Notice, ¶ 43.

<sup>13</sup> See *United States v. Ron Pair Enterprises, Inc.*, 109 S. Ct. 1026, 1031 (1989) ("[t]he plain meaning of legislation should be conclusive, except 'in the rare cases [in which] the literal application of the statute will produce a result demonstrably at odds with the intention of its drafters'" (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982))).

<sup>14</sup> Comments of PCIA, CC Dkt. No. 96-98, at 16-18 (filed May 16, 1996); Reply Comments of PCIA, CC Dkt. No. 96-98, at 4-12 (filed May 30, 1996).

<sup>15</sup> 47 U.S.C. § 153(44).

#### IV. CONCLUSION

The Commission should promulgate rules and policies in this proceeding that allow the CMRS market to remain highly competitive and largely deregulated. Therefore, CMRS should not be further subdivided for the purposes of the CPNI use restrictions of Section 222(c)(1), and CMRS should not be included within the definition of "telephone exchange service" for the purposes of the subscriber list disclosure requirements of Section 222(e).

Respectfully submitted,

**PERSONAL COMMUNICATIONS INDUSTRY  
ASSOCIATION**

By:

A handwritten signature in cursive script, reading "Mark J. Golden", followed by a circular stamp containing the letters "PCH".

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